## National Labor Relations Board



# Weekly Summary of NLRB Cases

Division of Information	Washington, D.C. 20570	Tel. (202) 273-1991
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A & A Insulation Services, Inc. (22-CA-24669; 344 NLRB No. 27) Hazlet, NJ Feb. 28, 2005. The Board granted the General Counsel's motion for summary judgment with respect to all issues except those relating to the use of Camilo Guzman as a replacement employee for discriminatee Ken Johnson and the inclusion of Guzman's earnings from January 5, 2002 to February 9, 2002 in Johnson's proposed reimbursement. It concluded that the amounts due discriminatees James Cunningham and Keith Wagner are as stated in the compliance specification, and ordered the Respondent to pay the amounts, plus interest accrued to the date of payment. The Board ordered a hearing limited to the issues relating to the use of Guzman as a replacement employee in the calculation of the backpay due to discriminatee Johnson. [HTML] [PDF]

In an unpublished order dated November 4, 2002, the Board directed the Respondent to make whole discriminatees Cunningham, Johnson, and Wagner for any loss of earnings and other benefits suffered as a result of the Respondent's discrimination against them. On April 30, 2003, the U.S. Court of Appeals for the Third Circuit entered an unpublished judgment enforcing the Board's order.

A controversy having arisen over the amount of backpay due the discriminatees under the Board's order, the Regional Director issued a compliance specification and notice of hearing identifying the amounts of backpay due. The Board found that the Respondent's answer is sufficiently specific under the Board's Rules and Regulations to warrant a hearing on the appropriateness of the use of Guzman as a replacement employee for Johnson in the calculation of backpay due Johnson and denied the General Counsel's motion for summary with respect to those issues. It deemed the other allegations in the compliance specification to be admitted as true and granted summary judgment as to them because the Respondent failed to deny the allegations in the manner prescribed in Section 102.56(b), or to explain its failure to do so.

(Chairman Battista and Members Liebman and Schaumber participated.)

General Counsel filed motion for summary judgment Nov. 5, 2004.

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Bliss Clearing Niagara, Inc. (7-CA-46528, et al.; 344 NLRB No. 26) Hastings, MI Feb. 28, 2005. In affirming the administrative law judge's findings, the Board held that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging employees Mike Shapley and Duane Schantz because they participated in protected union activities; violated Section 8(a)(1) by threatening, verbally harassing, and interrogating its employees, and by creating an impression of surveillance of its employees; and violated Section 8(a)(1) and (4) by depriving employees Larry Moran of the opportunity to work an additional shift due to his participation in proceedings before the National Labor Relations Board. [HTML] [PDF]

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by the Machinists International and William L. Moran, an Individual; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Grand Rapids, June 2-4, and July 26-28, 2004. Adm. Law Judge Paul Buxbaum issued his decision Nov. 5, 2004.

Clarian Health Partners, Inc. (25-RC-10225; 344 NLRB No. 28) Indianapolis, IN Feb. 28, 2005. After consideration of the Employer's request for review of the Regional Director's Decision and Direction of Election, the Board reversed the Regional Director's unit determination and remanded this case for further proceedings. [HTML] [PDF]

The Regional Director found appropriate the petitioned-for multifacility unit of skilled maintenance employees at the Employer's Indiana University Hospital (IU) and James Whitcomb Riley Hospital for Children (Riley). The Employer contended that the appropriate unit should also include skilled maintenance employees at its Methodist Hospital (Methodist) and four satellite facilities.

In determining whether a petitioned-for multifacility unit is appropriate, the Board evaluates the following factors: employees' skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history. *Laboratory Corp. of America Holdings*, 341 NLRB No. 140 (2004); *Bashas', Inc.*, 337 NLRB 710 (2002).

Evaluating the above factors, the Board found, contrary to the Regional Director, that the petitioned-for unit which includes employees only at IU and Riley, but not at Methodist, is not an appropriate unit for bargaining. It found that there is evidence of contact and interchange among employees at all three hospitals. The Board found that the skilled maintenance employees at IU and Riley do not share a community of interest distinct from that shared with skilled maintenance employees at Methodist; and that the employees at Methodist do not share a community of interest among themselves distinct from that they share with employees at IU and Riley. Accordingly, the Board deemed the petitioned-for unit inappropriate. As the Petitioner has not taken a clear position in regard to its willingness to proceed to an election in a unit different than the one found appropriate by the Regional Director, the case was remanded to the Regional Director for further appropriate action.

(Chairman Battista and Members Liebman and Schaumber participated.)

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## LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Chinese Daily News* (The Newspaper Guild, Communications Workers) Monterey Park, CA February 25, 2005. 21-CA-34626-1, et al.; JD(SF)-17-05, Judge Clifford H. Anderson.

*Teamsters Local 115* (Individuals) Philadelphia, PA March 1, 2005. 4-CB-9164, 9175; JD-14-05, Judge David L. Evans.

Extendicare Homes, Inc. d/b/a Bon Harbor Nursing and Rehabilitation Center (Steelworkers) Owensboro, KY March 3, 2005. 25-CA-28991, et al.; JD(ATL)-9-05, Judge John H. West.

*Sunrise Senior Living, Inc.* (Food & Commercial Workers Local 880 and an Individual) Cleveland, OH March 3, 2005. 8-CA-34969-1, 35060-1; JD-15-05, Judge Paul Bogas.

White Electrical Construction Co. (an Individual) Fairfield, AL March 4, 2005. 10-CA-35116; JD(ATL)-8-05, Judge Michael A. Marcionese.

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#### NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

*J & D Masonry, Inc.* (Bricklayers Local 9 Michigan) (7-CA-47407, 47547; 344 NLRB No. 32) Holt, MI February 28, 2005. [HTML] [PDF]

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## **TEST OF CERTIFICATION**

(In the following cases, the Board granted the General Counsel's motion for summary judgment on the ground that the Respondent has not raised any representation issue that is litigable in the unfair labor practice proceeding.)

*BFI Waste Services* (Teamsters Local 728) (10-CA-35326; 344 NLRB No. 33) Gainesville and Lawrenceville, GA February 28, 2005. [HTML] [PDF]

MEC Construction, Inc. (Plumbers Local 798) (6-CA-34417; 344 NLRB No. 30) Meadowbrook, WV February 28, 2005. [HTML] [PDF]

*Pontiac Nursing Home, LLC* (1199 New York's Health and Human Service Union, SEIU) (3-CA-25111; 344 NLRB No. 31) Oswego, NY February 28, 2005. [HTML] [PDF]

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# LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

## DECISION AND CERTIFICATION OF REPRESENTATIVE

*Milso Industries*, Albany, NY, 3-RC-11494, February 28, 2005 (Chairman Battista and Members Liebman and Schaumber)

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(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

#### DECISION AND CERTIFICATION OF REPRESENTATIVE

Veterans Transportation Services, Inc., Waltham, MA, 1-RC-21843, March 2, 2005 (Chairman Battista and Members Liebman and Schaumber)

## DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Hollingsworth Management Services, Dearborn, MI, 7-RC-22535, March 2, 2005 (Chairman Battista and Members Liebman and Schaumber)

# DECISION AND DIRECTION [that Regional Director open and count ballots]

- Alfredo, LDC, Fox Meadow Farms, Ltd., Kisco, NY, 2-RC-22898, March 3, 2005 (Chairman Battista and Members Liebman and Schaumber)
- Archer Daniels Midland Company, Langhorne, PA, 4-RC-20947, March 3, 2005 (Chairman Battista and Members Liebman and Schaumber)
- Carmeuse Lime Inc., Bettsville, OH, 8-RC-16639, March 3, 2005 (Chairman Battista and Members Liebman and Schaumber)

#### DECISION AND DIRECTION OF THIRD ELECTION

Barron Heating & Air Conditioning, Inc., Bellingham, WA, 19-RC-14429, March 4, 2005 (Chairman Battista and Members Liebman and Schaumber)

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(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Silver Cross Hospital, Joilet and Downers Grove and, Philadelphia, 13-RC-21277 March 2, 2005 (Chairman Battista and Member Schaumber; Member Liebman dissenting in part) [remanded to Regional Director for further appropriate action]

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## Miscellaneous Decisions and Orders

# ORDER [denying Employer's appeal of Regional Director's directing a mail ballot election]

Inter-Con Security Systems, Inc., Pasadena, CA, 21-RC-20520, March 3, 2005 (Chairman Battista and Members Liebman and Schaumber)

# CERTIFICATION OF REPRESENTATIVE AS BONA FIDE UNDER SECTION 7(B) OF THE FAIR LABOR STANDARDS ACT OF 1938

City of Chico, Chico, CA, 20-WH-16, February 28, 2005 (Chairman Battista and Members Liebman and Schaumber)

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